01/01/2011

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: Rico-Argentine Site Rico Tunnels Operable Unit, OU01 Dolores County, Colorado Atlantic Richfield Company, Respondent	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION U.S. EPA Region 8 Docket No. Proceeding Under Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), and the Atlantic Richfield Company ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the Rico-Argentine Site located in and around Rico, Dolores County, Colorado (the "Site").

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Colorado (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). With respect to this Settlement Agreement, for purposes of notice under Section 106(a) and involvement by the State under 40 C.F.R. § 300.500 in any response activity at the Site, the Water Quality Control Division ("WQCD") and the Hazardous Materials and Waste Management Division ("HMWMD") of the Colorado Department of Public Health and the Environment are the designated State agencies acting on behalf of the State.

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Findings of Facts, Conclusions of Law, and Determinations of Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms in any proceeding to implement or enforce this Settlement Agreement.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors and representatives performing Work at the Site receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement by its contractors, subcontractors, and representatives performing Work authorized by Respondent at the Site.

III. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Settlement Agreement, which are defined in CERCLA or in regulations promulgated under CERCLA, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Atlantic Richfield" shall mean the Atlantic Richfield Company, a Delaware corporation with its principal place of business in Warrenville, Illinois. In 1977, Atlantic Richfield purchased all of the stock of the Anaconda Company ("Anaconda"), and in 1981 Atlantic Richfield merged with Anaconda.

b. "Action Memorandum/Enforcement" shall mean the EPA Action Memorandum/Enforcement relating to the Site signed on ____, by the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8, and all attachments thereto. The Action Memorandum/Enforcement is attached as Appendix 1.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

d. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXL.

f "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs, not inconsistent with the NCP, and after the Effective Date, in reviewing or developing plans, reports and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 25 (including but not limited to, costs and attorneys fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), Paragraph 44 (emergency response), and Paragraph 70 (work takeover). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Respondent has agreed to reimburse under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 30 1980, to the Effective Date.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C.

§ 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States for response actions not inconsistent with the NCP at or in connection with the Site between July 4, 2010 and the Effective Date, and not otherwise included in Past Response Costs.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

l. "Parties" shall mean EPA and Respondent.

m. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid for response actions not inconsistent with the NCP at or in connection with the Site through July 3, 2010, plus Interest on all such costs through such date, if applicable.

n. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean the Atlantic Richfield Company.

o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control. This Settlement Agreement is an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §?????

q. "Site" shall mean the Rico-Argentine Site, located just north of the Town of Rico, Dolores County, Colorado, consisting of an adit known as the St. Louis Tunnel, its associated mine workings within the Telescope Dolores Mountains a series of 11 settling ponds located downgradient of the St. Louis Tunnel, depicted generally on the map attached as Appendix 2.

r. "State" shall mean the State of Colorado.

s. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

t. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Secfion 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under 6 CCR 1007-3 *et seq.*

u. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, as more particularly described in the Rico Tunnels Operable Unit Removal Action Work Plan, dated [Month Day,] 2011 (the "Work Plan"), as amended, a copy of which is attached hereto and incorporated herein as Appendix [3], and in any approved Work Plan modificafion made in accordance with Section XXVII of this Settlement Agreement. Work shall not include activities required by Section XI (Record Retention). Work also shall not include any response action at or in comection with any portions of the Site other than the Rico Tumels Operable Unit OU01.

IV. FINDINGS OF FACT

7. The Site is located in southwest Colorado, 25 miles southwest of the town of Telluride and just north of the town of Rico, within the northeastem comer of Dolores County. The Site is located in the San Juan Mountains, and within the Upper Dolores River Watershed. The Site consists of an adit (known as the St. Louis Tunnel) and associated underground mine-workings, a series of downgradient settling ponds and contents, and the area used to handle and store dredged sediments from up to 7 backfilled, abandoned or inactive settling ponds bounded to the west by the Dolores River. The Site is not listed on the National Priorities List ("NPL").

8. Historic mining operafions in the vicinity of the Site began in the early 1900's. The St. Louis Tumel was drilled by the St. Louis Smelting and Refining Company in the early 1930's. The St. Louis Tunnel adit drains a network of historical mine workings extending into Telescope Mountain and Dolores Mountain to the east and southeast, respectively. The Site is or was hydraulically connected to the mine workings of the former Pigeon, Logan, Wellington, Mountain Spring, Argentine, Blaine, and Blackhawk mines in the area. Anaconda acquired certain mineral development and surface property rights at the Site from the Rico Argentine Mining Company in 1980 and conducted exploration drilling at the Site from approximately 1980 to 1983.

9. Some of the underground mine workings are connected, and diversions direct infiltrating groundwater to the St. Louis Tunnel. Along that path, oxidation of mineralized rock in the workings increases acidity and heavy metal concentrations in the discharge from the adit.

10. The discharge from the adit was historically treated with lime precipitation at an on-site water treatment plant and routed through a series of settling ponds to achieve permitted water quality standards at the outfall into the Dolores River. The lime caused

some of the metals in the discharge to become insoluble and precipitate, forming a lime/heavy metal precipitate sludge that accumulated in of the upper settling ponds.

11. Anaconda assumed responsibility for operation of the water treatment and ponds system under the existing Colorado Discharge Permit System ("CDPS") permit (CO-0029793) in 1980. In 1984, after its 1981 merger with Anaconda, Atlantic Richfield constructed and began operating a new slaked-lime addition plant to treat the St. Louis Tunnel adit discharge as it entered the ponds system. Between 1984 and 1995, slaked lime was added to the turnel discharge to improve water treatment and solids removal. In 1988, Atlantic Richtield sold its interests at the Site to Rico Development Corporation. The CDPS permit transferred to Rico Development Corporation at that time. Ih 1996, active treatment of the discharge with lime was discontinued and since then, maintenance of the settling ponds has been minitiial. The CDPS permit expired in 1999 and was not renewed.12. The lime/heavy metal precipitate slidge is contained within unlined settling ponds which are surrounded by earthen berms and embankments. The longest of the earthen berms runs the entire 0.5 mile length of the west side of the Site, along the Dolores River. The upper ponds (Ponds 10 through 18) have been in place since approximately 1956. The lower ponds (Ponds 5 through 9), and moditications to the upper ponds, were constructed sometime after 1956, but before 1979. The upper ponds contain a combination of settied solids from naturally precipitated metals (primarily iron), solids precipitated by lime addition over the period of time when the on-site treatment plant was operated, and eroded sediments. The berms are partially armored with rip rap and the aerial extent of the system of settling ponds lies within the 100-year floodplain of the Dolores River.

13. In April 2000, EPA Region 8's Eniergency Response Program responded to a request from the Town of Rico to address a breach, due to a lack of maintenance, on the berm of Pond 18. Pond 18 contains the largest volume of impounded sediment in the system, is directly adjacent to the Dolores River, and is the tirst settling pond after the adit. If the pond containment failed, signiticant amounts of sediments laden with hazardous substances would have been discharged directly into the Dolores River. EPA's response consisted of further raising and reinforcing the riverside embankment of the pond, adding an additional culvert between the pond and downgradient ponds, and installing overflow rip rap as a backup drain path.

14. Atlantic Richtield performed ongoing clearing and maintenance of existing hydraulic facilities and structures and construction of additional controlled overflows (spillways) in the ponds flow system at various times between 2000 and 2008. Further improvements to provide for additional normal freeboard and spillway capacity at Pond 18 were implemented in the fall of 2010.

15. On or about August 5, 2010, Atlantic Richtield submitted an application to the WQCD for issuance of a new CDPS Industrial Individual Wastewater Discharge Permit for the discharge from the St. Louis Tunnel adit and ponds system. The application described Atlantic Richfield's plans for the design and construction of a new hydrated

lime treatment facility at the Site, solids removal and management within the Ponds, and upgrades to the pond embankments and associated hydraulic structures. The application also included a copy of the Water Quality Assessment for the St. Louis Tunnel discharge completed by the WQCD in October 2008 to facilitate the issuance of a CDPS permit and the determination of permit effluent limits for the discharge.

16. Hazardous substances in the St. Louis Tunnel adit discharge include cadmium, copper, lead, silver and zinc, all of which are being released into the environment. For example, the zinc concentration in the discharge from the St. Louis Pond outfall flowing into the Dolores River was 3,900 ug/L in June 2010. Historical data from samples collected from the same outfall indicate that concentrations in the discharge to the river are increasing. Data from outfall samples reported to the State by the Respondent show zinc concentrations of 410 ug/L in July 2002, 1,120 ug/L in 2003, and 3,100 ug/L in December 2004. As presented in the State Water Quality Analysis (WQA), the current water quality standard for zinc for that segment of the Dolores River is 269 ug/L (chronic) and 310 ug/L (acute). The results of samples taken by EPA from the mouth of the St. Louis Tumel adit in June 2010 revealed dissolved zinc concentrations at 7,700 µg/L. Available historical sample data indicate that zinc concentrations in the drainage from the adit range from approximately 3,000 ug/L to approximately 5,000 ug/L. The records of discharge rates from the adit reported in the WQA range from 2 to 3.3 cubic feet per second (cfs). The low flow predictions for the Dolores River seasonally range from approximately 3.2 to 45 cfs. Calculations from the WQA indicate that zinc concentrations currently discharging from the untreated pond system outfall would exceed the low flow assimilative capacity of the Dolores River. Similar to zinc concentrations, cadmium concentrations in the untreated discharge are also expected to exceed the assimilative capacity based on similar potential low flow conditions and recent concentrations in the discharge.

17. Hazardous substances present in the over 68,000 cubic yards of sediments and water treatment sludge currently impounded to near the maximum capacity within the settling ponds at the Site also contain copper, cadmium, lead and zinc. Sediment sampling conducted within the pond system since 1996 shows the following ranges of metal concentrations: 18,000 to 37,700 ppm zinc; 51.4 to 190 ppm cadmium; 650 to 2,460 ppm copper; and 200 to 957 ppm lead. The largest sludge volume is reported to be in Pond 18. As of June 2010, the remaining freeboard in some locations in Pond 18 was less than 12 inches. Additionally, an analysis of historical discharge flow rates revealed a 40% loss in flow between the mouth of the adit and the discharge point from the settling ponds system into the Dolores River (Outfall 02). The magnitude of this difference in flow rates indicates there is signiticant loss of mine drainage water from the unlined ponds and seepage from the dikes. A major failure or breach in the containment dike of one of the uppermost settling ponds would result in a release of hazardous substances into the Dolores River and adversely affect aquatic life and water quality. .

18. This Settlement Agreement provides for implementation of portions of the Time-Critical Removal Action. This Settlement Agreement and the Work required hereunder pertain only to the implementation of the portions of the Time-Critical

Removal Action addressed by the Work Plan, as amended. Implementation of subsequent phases or other aspects of the Time-Critical Removal Action may be addressed through amendments to this Settlement Agreement, by separate orders or decrees, or by other parties.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

19. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. For purposes of this Settlement Agreement, the Respondent as the successor to the liabilities of Anaconda, is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for the performance of response actions and for response costs incurred and to be incurred at the Site. Anaconda was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in Paragraphs 7-18 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f The removal action required by this Settlement Agreement is necessary to protect the public health, welfare or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

20. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

21. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) before [May 1, 2011]. Respondent shall also nofify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 7 days of EPA's disapproval.

22. Respondent shall designate a Project Coordinator who shall be responsible for administration of all acfions by Respondent required by this Settlement Agreement. Respondent's initial Project Coordinator shall be:

Chuck T. Stilwell
Atlantic Richfield Company
MBI1-900 E. Benson Blvd.
P.O. Box 196612
Anchorage, Alaska 99519-6612
Tel: (907) 771-8083
Chuck.Sfilwell@bp.com

To the greatest extent possible, the Project Coordinator or his designee shall be present on Site or readily available during Site Work. Respondent may change its Project Coordinator if it provides written notice to EPA at least 7 days before such change is made. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days of EPA's disapproval. Receipt by Respondent Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall consfitute receipt by Respondent.

23. EPA has designated Steven Way of the Preparedness, Assessment and Response Program of the Office of Ecosystems Protection & Remediation, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, or agreed to by the OSC, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 1595 Wynkoop St., Denver, CO 80202-1129 in both paper and electronic format.

24. EPA shall have the right to change its designated OSC. If EPA changes its OSC, EPA will inform Respondent in writing of the name, address, and telephone number of the new OSC.

VIII. WORK TO BE PERFORMED

25. Respondent shall perform, at a minimum, the following actions necessary to implement the Work Plan approved by EPA, attached hereto as Appendix 3:

a. Management of precipitation solids in the settling ponds below the St. Louis Tunnel adit discharge, including partial removal of solids from the upper ponds;

b. Construction of an on-Site solids repository in accordance with the siting requirements of the Colorado HMWMD and Dolores County;

c. Investigation of actions that can be feasibly implemented at the collapsed St. Louis Tunnel portal to stabilize the adit opening and consolidate adit flows;

d. Development of a preliminary design (30%) for appropriate hydraulic controls at or near the adit opening to manage flows entering the treatment system; and

e. Development of a preliminary (30%) design for a new lime-addition and settling ponds treatment system for the St. Louis Tunnel adit discharge, including upgrades to pond embankments and hydraulic structures. The preliminary design will be based, in part, on the Water Quality Assessment. The preliminary design objective will be achievement of numeric effluent limitations specified under a CDPS permit to be issued by the Colorado WQCD for the discharge from the ponds system to the Dolores River.

26. Work Plan and Implementation

a. The Work Plan approved by EPA provides a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. EPA shall require preparation of a Quality Assurance Project Plan ("QAPP") as a supplement to the Work Plan except in circumstances involving emergency or non-complex removal work. The QAPP should be prepared in accordance with "EPA Requirements for Quality Assurance Plans (QA/R-5)" (EPA/240/**B**-01/003, March 2001, Reissued May 2006), and "EPA guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002).

b. If necessary, for each year after 2011 that Respondent is required to perform Work under this Settlement Agreement, Respondent shall submit to EPA for approval a draft Work Plan amendment by March 1, or some later date if agreed to by the **O**SC, specifying the Work to be performed during that year, any modifications that Respondent proposes to make to the Work described in the Work Plan, and any proposed changes to the Work Plan's schedule.

c. EPA may approve, disapprove, require revisions to, or modify a draft Work Plan amendment in whole or in part. If EPA requires revisions to a Work Plan amendment, Respondent shall submit a revised draft Work Plan amendment within 14 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan and Work Plan amendments as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, any Work Plan amendments, the schedule, and any subsequent modifications shall be incorporated into, and become fully enforceable under, this Settlement Agreement.

d. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan or a Work Plan amendment developed hereunder until receiving written EPA approval pursuant to Paragraph 26(c).

27. Health and Safety Plan Within 90 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site Work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

28. Quality Assurance and Sampling

a. All soil, sediment, and water sampling and laboratory analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation and chain-of-custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

29. Post-Removal Site Control In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

30. Reporting

a. By the tenth of each month, and commencing in May 2011, Respondent shall submit a monthly written progress report to EPA conceming actions undertaken pursuant to this Settlement Agreement until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, the SOW, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Should Respondent own or control property at the Site, it shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

31. Final Report Within 120 days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The

final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall comply with applicable sections of "Superfund Removal Procedures: Removal Response Reporting-POLREPS and OSC Reports" (OSWER Direcfive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g. manifests, invoices, bills, contracts and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> "Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. Off-Site Shipments

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the OSC. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 32(a) and 32(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants or contaminants from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA

Section 121(d)(3), 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

33. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide EPA, the State and their representatives, including contractors, with access at all reasonable times to the Site, or other such property, for the purpose of conducting any activity related to this Settlement Agreement.

34. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 14 days of the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in considerafion of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attomey's fees incurred by the United States not inconsistent with the NCP in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

35. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

36. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the performance of the Work or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, tmcking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents or representatives with knowledge of relevant facts conceming the performance of the Work.

37. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart

B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA notifies Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

38. Respondent may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record or information; 2) the date of the document, record or information; 3) the name and title of the author of the document, record or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

39. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

40. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records and information of whatever kind, nature or description relating to performance of the Work.

41. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records or other information are privileged under the attorney-client privilege, the work product doctrine, or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record or information; 2) the date of the document, record or information; 3) the name and title of the author of the document, record or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or

generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

42. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification on November 22, 2010 of its potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

43. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, State and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state or local environmental or facility siting laws. Respondent shall identify the ARARs for the Work in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

44. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, the Regional Duty Officer (Emergency Planning and Response, EPA Region 8, 303.293.1788) of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

45. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 303.293.1788 and the National Response Center at 800.424.8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. §

9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

XIV. AUTHORITY OF ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

46. Payment of Past Response Costs

a. Within 60 days after the Effective Date, Respondent shall pay to EPA $____ for Past Response Costs. Payment shall be made to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference the EPA Region and Site/Spill ID Number (08-BU; OU01), and the EPA docket number for this action.

At the time of payment, Respondent shall send notice that such payment has been made to Carol Pokomy, 8ENF-RC and Martha Walker, CFO, 8TMS-F, EPA Region 8, 1595 Wynkoop St., Denver, CO, 80202-1129, and to the EPA Cincinnati Finance Office by email to acctsreceivable.cinwd@epa.gov,
Such nofice shall reference the EPA Region and Site/Spill ID Number (08-BU; OU01) and the EPA docket number for this action.

b. The total amount to be paid by Respondent pursuant to Paragraph 46(a) shall be deposited by EPA into the Rico-Argentine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

47. Payment for Future Response Costs

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. The initial billing shall include the Interim Response Costs as well as

Future Response Costs. Respondent shall make all payments within 60 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 49.

b. Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency," and shall reference the EPA Region and Site/Spill Number (08-BU; OU01) and the EPA docket number for this action.

At the time of payment, Respondent shall send notice that such payment has been made to Carol Pokorny, 8ENF-RC and Martha Walker, CFO-8TMS-F, EPA Region 8, 1595 Wynkoop St., Denver, CO, 80202, and to the EPA Cincinnati Finance Office by email to acctsreceivable.cinwd@epa.gov
Such notice shall reference the Site/Spill ID Number (08-BU; OU01) and the EPA docket number for this action.

d. The total amount to be paid by Respondent pursuant to Paragraph 47(a) shall be deposited by EPA in the Rico-Argentine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

48. In the event that the payment for Past Response Costs is not made within 60 days of the Effective Date, or the payments for Future Response Costs are not made within 60 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue from the Effective Date and shall continue to accrue on the until the date of payment. The Interest on Future Response Costs shall begin to accrue from the date of the bill and shall continue to accrue until the date of payment. Payments of Interest under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

49. Respondent may contest payment of any Future Response Costs billed under Paragraph 47 if it determines that EPA has made a mathematical or other accounting error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the

basis for objectionin the event ofobjection dispute over the billed Future Response Costs, Respondent shall, within the 60-day period, pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 45. Simultaneously, Respondent shall establish or maintain an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Colorado and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and tunds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with the funding of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 14 days of the resolution of the dispute, Respondent shall instruct the escrow agent to release the sums due (with accrued interest) to EPA in the manner described in Paragraph 46. If Respondent prevails conceming any aspect of the contested costs, Respondent shall instmct the escrow agent to release only that portion of the costs (plus associated accmed interest) for which it did not prevail to EPA in the manner described in Paragraph 46. Any funds remaining in the escrow account upon resolution of the dispute may be used or released as directed by Respondent at its sole discretion. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements conceming this Settlement Agreement expeditiously and informally.

51. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

52. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part

of this Settiement Agreement. Respondent's obligafions under this Settiement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Secfion, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

53. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure.* For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anficipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

55. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. Within 7 days of receiving Respondent's written rationale for attributing a performance delay to a *force majeure* event, EPA shall either notify Respondent in writing that EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event or, if EPA agrees that the delay is attributable to a *force majeure* event, of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

56. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 57 and 58 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

57. Stipulated Penalty Amounts – Work (Including Payments)

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in this Paragraph:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$3,000	15th through 30th day
$4,500	31st day and beyond

b. Compliance Milestones

(1) Designation of contractors and subcontractors pursuant to Section VII.

(3) Implementation of the Work described in the Work Plan or any approved Work Plan amendment in accordance with the schedule(s) provided therein or otherwise approved by EPA.

(4) Submitting any Work Plan amendment required under pursuant to Paragraph 25 in accordance with the schedule provided therein or otherwise approved by EPA.

(5) Submitting the Health and Safety Plan required under to Paragraph 26 in accordance with the schedule provided therein or otherwise approved by EPA.

(6) Following the QA/QC and sampling/analyses requirements set forth in Paragraph.

(7) Submitting a proposal for, and then implementing, post-removal Site control pursuant to Paragraph 29.

(8) Providing the notice required by Paragraph 30.

(9) Complying with the off-site shipment requirements set forth in Paragraph 32.

(10) Obtaining and providing Site access pursuant to Paragraphs 33, 34 and 35.

(11) Providing access to information pursuant to Paragraph 36.

(12) Retaining records pursuant to Paragraphs 40 and 41.

(13) Undertaking emergency response actions pursuant to Paragraph 44 and providing notification of releases pursuant to Paragraph 45.

(14) Obtaining and maintaining insurance pursuant to Paragraph 87.

(15) Obtaining and maintaining financial assurance pursuant to Paragraphs 89-90.

(16) Paying stipulated penalties as required by this Section.

58. Stipulated Penalty Amounts – Reports The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports (or other written documents) pursuant to Paragraph 30 or 31:

Penalty Per Violation Per Day	Period of Noncompliance
$900	1st through 14th day
$2,250	15th through 30th day
$4,500	31st day and beyond

59. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 7069 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of $500,000.

60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or higher, under Paragraph 52 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation

Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

61. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalfies. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

62. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by Fedwire Electronic Funds Transfer in accordance with Paragraph47.b. or by official bank check made payable to "EPA Hazardous Substances Superfund." Payments shall indicate that the payment is for Stipulated Penalties, shall reference the EPA Region and Site/Spill ID Number (08-BU; OU01), the EPA Docket Number for this action, the name and address of the party making payment, and shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

63. At the time of payment, Respondent shall send notice that payment has been made as provided in Paragraph 47.b. above.

64. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

65. Penalties shall continue to accrue during any dispute resolution period, but need not be paid: (a) until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision, or (b) if Respondent prevails with respect to any dispute giving rise or pertaining to stipulated penalties.

66. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 61. Nothing in this Settlement Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 70. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settiement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

67. In consideration of the actions that will be perfonned and the payments that will be made by Respondent under the terms of this Settlement Agreement, and for purposes of resolving Respondent's liability to EPA for response acts as set forth herein, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the performance of the Work and for payment of Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

68. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct or order all actions necessary to protect public health, welfare or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

69. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly idenfified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. Claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. Liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. Liability for performance of response action other than the Work;

d. Criminal liability;

e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f Liability arising from the past, present or future disposal, release or threat of release of Waste Materials outside the Site; and

g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

70. Work Takeover In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary following notice to Respondent and a reasonable opportunity to cure. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work, not inconsistent with the NCP, pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANTS NOT TO SUE BY RESPONDENT

71. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Colorado Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Past Response Costs, or Future Response Costs.

72. Except as provided in Paragraphs 74 and 76 (Non-Exempt De Micromis and *De Minimis*/Ability to Pay Waivers), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XX (Reservation of Rights by EPA) other than in Paragraphs 69 (claims for failure to meet a requirement of the Settlement Agreement) or 69.c) (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

73. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

74. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

75. The waiver in Paragraph 74 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. That such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. That the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either

individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

76. Respondent agrees not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613), that it may have for all matters relating to the Site against any person that has entered or in the future enters into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

XXII. OTHER CLAIMS

77. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Settlement Agreement.

78. By entering into this Settlement Agreement, Respondent assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of the United States or EPA. Respondent shall not be deemed a party to any contract entered into by the United States or EPA or their respective officials, directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Settlement Agreement.

79. Except as expressly provided in Section XXI, Paragraphs 74 and 76 (Non-Exempt De Micromis and *De Minimis*/Ability to Pay Waivers) and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

80. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

81. a. Except as expressly provided in Section XXI, Paragraphs 74 and 76 (Non-Exempt De Micromis and *De Minimis*/Ability to Pay Waivers), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as expressly provided in Section

XXI, Paragraphs 74 and 76 (Non-Exempt De Micromis and *De Minimis*/Ability to Pay Waivers), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands and causes of action which each Party may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.

82. §§ 9613(f)(2) and 9622(h)(4), and that Respondent i s entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

c. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

83. Respondent shall, with respect to any suit or claim brought by it against any person not a party to this Settlement Agreement for matters related to this Settlement Agreement, notify EPA in writing no less than 30 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XXIV. INDEMNIFICATION

84. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf

of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

85. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

86. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

87. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for as long as Respondent is required to perform Work at the Site under this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of $1,000,000.00, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance. Respondent shall submit such certificates each year on the anniversary of the Effective Date. In addition, for as long as Respondent is required to perform Work at the Site under this Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

88. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of ____ in the form of an irrevocable letter of credit equaling the total estimated cost of the work. Respondent shall send a copy of the letter of credit to Daniela Golden, 8 ENF-RC, 1595 Wynkoop, Denver, CO, 80202-1129.

89. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are insufficient to ensure completion of the remaining Work,

Respondent shall, within 30 days of receipt of nofice of EPA's determination, obtain and present to EPA for approval another form of financial assurance. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased beyond the amount of the financial assurances provided pursuant to this Section, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

90. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 87 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section **XVI** (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

XXVII. MODIFICATION

91. The **OSC** may make modifications not inconsistent with CERCLA or the NCP, to the Work Plan, any Work Plan amendment, or any schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the **OSC**'s oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

92. If Respondent seeks permission to deviate from the Work Plan or any approved Work Plan amendment or schedule, Respondent's Project Coordinator or contractor shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the **OSC** pursuant to Paragraph 91.

93. No informal advice, guidance, suggestion or comment by the **OSC** or other EPA representatives regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII, NOTICE OF COMPLETION OF WORK

94. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including

payment of Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement. Notice from EPA under this Paragraph shall be provided to Respondent within 60 days of EPA's receipt of the Final Report.

XXIX. PUBLIC COMMENT

95. Final acceptance by EPA of Section XV (Payment of Response Costs) of this Settlement Agreement shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Settlement Agreement if comments received disclose facts or considerations that indicate that Section XV of this Settlement Agreement is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondent that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

XXX. INTEGRATION/APPENDICES

96. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix 1-Action Memorandum/Enforcement

Appendix 2Map of the Site

Appendix 3Statement of Work.

XXXI. EFFECTIVE DATE

97. This Settlement Agreement shall be effective 7 days after the Settlement Agreement is signed by the Regional Administrator or his delegatee, with the exception of Section XV, which shall be effective when EPA issues notice to Respondent that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

98. The undersigned representative(s) of Respondent certify that he/she/they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind Respondent to this document.

Agreed this _____ day of _____, 2011.

For Atlantic Richfield Company

By _____ _____
Printed Name Date

_____
Title

It is so ORDERED and Agreed this _____ day of _____, 2011.

BY: _____
David Ostrander, Director
Preparedness, Assessment, and Response Program
U.S. Environmental Protection Agency, Region 8